83-1997

Office - Supreme Court, U.S.
FILED
JUN 4 1984
ALEXANDER L. STEVAS
CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

JOHN C. AMIS, JR.
D/B/A AMEY, INC., GULF MAPS, BONITA REALTY
Appellants

v.

CITY OF FORT MYERS, FLORIDA
and the CODE ENFORCEMENT BOARD
of the City of Fort Myers
and ELLIS SOLOMON, Mayor,
Appellees

APPEAL FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JURISDICTIONAL STATEMENT

JOHN C. AMIS, JR.
In Propria Persona
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

30 pp

QUESTIONS PRESENTED UPON APPEAL

1. Does the due process clause of the fourteenth amendment prohibit the States from denying a citizen Procedural Due Process?

TABLE OF CONTENTS

	Page
Questions Presented Upon Appeal	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Plenary Consideration	
1. THE DUE PROCESS CLAUSE PROHIBITS THE STATE FROM DENYING MEANINGFUL APPELLATE REVIEW GUARANTEED BY STATUTE	4
Conclusion	5
Certificate of Service	6
Appendix	A-1

TABLE OF AUTHORITIES

Cases:	Page
Board of Regents v. Roth, 408 U.S. 564,577 (1972)	4
Haines v. Kerner 404 U.S. 519 30 L. ED 2D 652,654	5
Kohlasch v. New York State Thruway Authority 460 F. Supp. 956 (S.D.N.Y. 1978)	4
Stoller 36 So. 2d 443, 444 (1948)	4
Constitutional and Statutory Authorities	
U.S. Const. amend. XIV	2
Fla. Const. Art. 1 Sec. 2	2
Fla. Const. Art. 1 Sec. 21	2
Fla. Statutes Ch 166.057	2, 4
Fla. Statutes Ch 166.061	2

OPINIONS BELOW

There are no opinions from the State Courts. However, the Order of the Circuit Court is set out in the Appendix at (A-9). The District Court of Appeal order is set out in the Appendix at (A-10) and the Supreme Court of Florida denied the Motion for Reinstatement on March 7, 1984 (A-17).

JURISDICTION

The judgment of the Court of Appeal of Florida, Second District, was entered on December 9, 1983, a motion for rehearing or for clarification was denied on January 11, 1984. The Supreme Court of Florida refused jurisdiction on March 7, 1984. A notice of Appeal from the judgment of the Second District Court of Appeal was filed in the Second District Court of Appeal of Florida on May 30, 1984.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution provide:

> No State Shall — deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Constitution of the State of Florida provided:

> Article 1, Section 2. Basic Rights — All natural persons are equal before the law and have inaleinable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion or physical handicap.
>
> Article 1, Section 21. Access to Courts — The Courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Florida Statutes (1981) Chapter 166.057 (4) provided:

> — "[T]he record shall be presented to the Court on appeal and shall be subject to review."

Florida Statutes (1981) Chapter 166.061 provided:

> Appeals. — An aggrieved party may appeal a ruling or order of the enforcement board by certiorari in Circuit Court. An appeal shall be filed within 30 days of the execution of the order to be appealed.

STATEMENT OF THE CASE

In 1963, Amey, Inc., A Florida Corporation bought a parcel of land zoned business within the Corporate limits of the City of Fort Myers, Florida.

Amey, Inc. started operating an engineering and surveying business on the parcel of land and obtained City occupational licenses through 1968.

In 1968 the City of Fort Myers rezoned the property from business to residential without notifying Amey, Inc. of the proposed zoning change.

Amey, Inc. has not purchased a City occupational license since 1968.

On February 15, 1979, Amey, Inc. deeded the parcel of land to John C. Amis, Jr.

On January 21, 1982, the Code Enforcement Board of the City of Fort Myers ordered that John C. Amis, Jr. D/B/A Amey, Inc., Gulf Maps, and Bonita Realty, purchase occupational licenses for all of the years from 1969 to date (A-3). Appellant pointed out to the City that the property was zoned residential and issuance of occupational license would be in violation of the City Code.

Appellant requested that the City restore the business zoning to the property, but the City refused and issued another order which placed a lien, not against Amey, Inc., but instead against the real property of John C. Amis, Jr. (A-5).

Florida Statutes Ch166, which permitted the establishment of the Code Enforcement Board also permitted the filing of a lien on land where the business existed, regardless of who owned the land. (A-8) In this case, the alleged violator of the City ordinance (Amey, Inc.) did not own the land and the lien was in fact filed against the real property of John C. Amis, Jr., which constituted a taking of property without due process of law. Appellant's petition for Writ of Certiorari in the Circuit Court was dismissed on May 12, 1983, without an opinion (A-9).

Appellant's appeal was dismissed by the Second District Court of Appeal on December 9, 1983, PER CURIAM without an opinion (A-10).

Appellant's Motion for Rehearing or for Clarification (A-11) was dismissed January 11, 1984, without an opinion (A-13)

Appellant filed an appeal to the Florida Supreme Court on February 28, 1984.

The Florida Supreme Court dismissed subject to reinstatement if jurisdiction is established (A-14).

Appellant filed a motion for reinstatement on February 28, 1984 (A-15).

The Florida Supreme Court denied the motion for reinstatement on March 7, 1984 (A-17).

REASONS FOR PLENARY CONSIDERATION

1. The due process clause prohibits the state from taking property without due process of law.

One Lower Court has explained well the elements that must be present for an unconstitutional taking to occur. There must be (1) a property interest, (2) state action, and a lack of just compensation or due process. Kohlasch v. New York State Thruway Authority, 460 F. Supp. 956, 960 (S.D.N.Y. 1978).

This Court has noted the often quoted principle that

> [p]roperty interests — are not created by the constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law —

Board of Regents v. Roth, 408 U.S. 564, 577 (1972). Under established Florida law, Amis was the Allodial owner of the property at the time the liens were filed and therefore suffered a direct and immediate injury.

The law which permitted the creation of the City Code Enforcement Board made a specific requirement that any order of the Board shall be reviewed by the Circuit Court when a petition for Writ of Certiorari is filed in the Circuit Court. Florida Statutes Ch 166.057 (4).

In Re Stoller 36 SO. 2D, 443, 444 (1948) the Supreme Court of Florida, En Banc. did recognize (5. Constitutional law) that "The Bill of Rights was provided as a barrier to protect individuals against arbitrary exactions of majorities, executives, legislatures, courts, sheriffs, and prosecutors, and it is the primary distinction between democratic and totalitarian processes.

Clearly the legislature, in passing Public Law 80-82, was concerned with establishing a method of review of actions of the Code Enforcement Board and provided a mandatory review of any order properly submitted to the Court (A-8).

The total failure of the Lower Courts to give an explanation or reasons for dismissal is a denial of Petitioners' right to Appellate review under state law, which is in effect denial of due process.

This Court should permit further discussion of the Order of the Court of Appeal in Florida and hold that Amis is entitled to his day in Court.

This Court has already considered the status of the Pro Se litigant and decided in Haines v. Kerner 404, U.S. 519, 30 L. Ed 2d 562, 654 [3]. Accordingly, although we intimate no view whatever on the merits of Petitioners allegations, we conclude that he is entitled to an opportunity to offer proof.

CONCLUSION

The Second Court of Appeal of Florida by denying Petitioners motion for rehearing or for clarification without an opinion eliminated further judicial review in the State Courts.

For the aforementioned reasons, the Appellants pray that this Court grant plenary review of the decision of the Court of Appeal of Florida.

Respectfully submitted,

John C. Amis, Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this _____ day of June, 1984, mailed three copies of this jurisdictional statement, postage prepaid, to:

Jim Smith
Attorney General, State of Florida
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

Norman A. Hartman, Jr.
Goetz & Hartman
Post Office Box 6844
Fort Myers, Florida 33911

John C. Amis, Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

JOHN C. AMIS, JR.
D/B/A AMEY, INC., GULF MAPS, BONITA REALTY
Appellants,

v.

CITY OF FORT MYERS, FLORIDA
and the CODE ENFORCEMENT BOARD
of the City of Fort Myers
and ELLIS SOLOMON, Mayor,
Appellees

APPEAL FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

APPENDIX

JOHN C. AMIS, JR.
In Propria Persona
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

TABLE OF CONTENTS

PAGE

Order of the Code Enforcement Board of the City of Fort Myers, January 21, 1982 ..... A-3

Order of the Code Enforcement Board of the City of Fort Myers, February 24, 1982 ..... A-5

1981 Florida Statutes Chapter 166.057, 166.058, 166.059 and 166.061 ..... A-7

Order of Circuit Court granting motion to dismiss, May 12, 1983 ..... A-9

Order of the Court of Appeal, December 9, 1983 ..... A-10

Petitioner's motion for rehearing or for clarification, December 21, 1983 ..... A-11

Order of the Second District Court of Appeal denying motion for rehearing or for clarification, January 11, 1984 ..... A-13

Order of the Florida Supreme Court, February 16, 1984 ..... A-14

Appellant's motion for reinstatement, February 28, 1984 ..... A-15

Order of the Florida Supreme Court denying motion for reinstatement, March 7, 1984 ..... A-17

Notice of Appeal to the United States Supreme Court, May 30, 1984 ..... A-18

BEFORE THE CODE ENFORCEMENT BOARD OF
THE CITY OF FORT MYERS, LEE COUNTY, FLORIDA

* * * * * *

CITY OF FORT MYERS, FLORIDA	)
	)
vs.	) CASE NO. 25
	)
JOHN C. AMIS, JR., DBA: AMEY, INC. 2670 Maple Ave., Fort Myers, FL 33901	) ORDER)
	)

* * * * * *

WE, the members of the Code Enforcement Board of the City of Fort Myers, hereby state as findings of fact in the present case, the following: VIOLATION OF:

Fort Myers Code 41-5.5; 21-7
Operation of a Business in an improper zone,
Operation of a Business without City License.
(A) Engineering office is not a permitted use in Res. A-3.
(B) Engaging in a business in an improper zone is not permitted.

WE, the members of the Code Enforcement Board of the City of Fort Myers, make the following conclusions of law in the present case:

Guilty of violating Section 41-5.5; 21-7
Operation of a Business in an improper zone
Operation of a Business without a City License

ACCORDINGLY, it is hereby ORDERED AND ADJUDGED that **JOHN C. AMIS, JR., DBA: AMEY, INC.** shall remedy the aforesaid violations(s) **purchasing delinquent Occupational License fees since 1969 ($650.)** & Penalty on or before the **31st** day of **January, 1982:**

And, if the aforesaid violator shall fail to do so within the aforesaid time, upon proper notice and application to this Board by the Code Enforcement Inspectors of the City of Fort Myers, a fine shall be imposed upon the aforesaid **JOHN C. AMIS, JR.** in

the amount of $250.00 per day for each day of the violation(s) continues past the date set for compliance in the present order. Non-compliance will result in imposition of a lien against your property.

DONE AND ORDERED this 21st day of January, 1982, in the City of Fort Myers, Lee County, Florida.

Appeal. An aggrieved party may appeal a ruling or order of the Enforcement Board by certiorari in circuit court. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

/s/ JIM BUTLER
Chairman
of the Code
Enforcement Board
of the City of Ft. Myers

Exhibit A Sheet 1 of 3

BEFORE THE CODE ENFORCEMENT BOARD OF
THE CITY OF FORT MYERS, LEE COUNTY, FLORIDA

* * * * * *

CITY OF FORT MYERS	)	1525978
	)	
vs.	)	Case No. 25, 26 and 27
	)	
John C. Amis, Jr.	)	
d/b/a Amey, Inc.; Gulf Maps:	)	O R D E R
Bonita Realty.	)	IMPOSING A FINE
2670 Maple Avenue, Ft. Myers	)	

* * * * * *

FILED
82-1123CA-RTS
Oct. 25, 1982
SAL GERACI
CLERK OF
CIRCUIT COURT
BY /S/ J. COOK D.C.

WE, the members of the Code Enforcement Board of CITY OF FORT MYERS, having determined:

That the violator should have fully complied with Section 21-17 of the City Code;

That a fine in the amount of $2,437.50 owed for accrued back license fees and penalties;

That having met and heard evidence of the violator's failure to comply with the aforementioned code section;

IT IS ORDERED that a fine in the amount of $2,437.50 is imposed against:

John C. Amis, Jr., d/b/a Amey, Inc.; Gulf Maps; and
Bonita Realty.
2670 Maple Avenue, Fort Myers, Florida 33901

Parcel #5182-25-44-24-OC-05182.0000
Evans Avenue Heights
Block F, Lot 14, PB 6, pg 48
or 1331/0627

Recorded Mar. 5, 2:55
PM'82 - Sal Geraci
Clerk of Circuit Court
/s/ Sal Geraci

This ORDER shall constitute a lien against the land on which the violation exists.

DONE AND ORDERED THIS 24th day of February, 1982, in Fort Myers, Lee County, Florida.

/s/ JAMES O. BUTLER
Presiding Officer of the
Code Enforcement Board of
the City of Fort Myers

This lien is being filed on the above referenced property upon motion of City Council by the City Clerk on March 4, 1982.

/s/ M. W. MATZ
M. W. MATZ, City Clerk

166.057 Conduct of hearing. —

(1) The chairman of the enforcement board may call hearings of the enforcement board; hearings may also be called by written notice signed by at least three members of the enforcement board. At any hearing the enforcement board may set future hearing date. The enforcement board should attempt to convene not less frequently than once every two months, but may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings by the enforcement board, and all hearings shall be open to the public. The city council shall provide clerical and administrative personnel as may be reasonably required by the enforcement board for the proper performance of its duties.

(2) Each case before the enforcement board shall be presented by the city attorney or by a member of the administrative staff of the municipality.

(3) The enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings.

(4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record, and conclusions of law and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those present and voting, except that at least three members of enforcement board must vote in order for the action to be official. The record shall be presented to the court on appeal and shall be subject to review.

166.058 Powers of the enforcement board.

The enforcement board shall have the power to:

(1) Adopt rules for the conduct of its hearings.

(2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the police department of the municipality.
(3) Subpoena evidence.
(4) Take testimony under oath.
(5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance.

History. s.1,ch.80-300.

166.059 Administrative fines; liens. — The enforcement board, upon notification by the code inspector that a previous order of the enforcement board has not been complied with by the set time, may order the violator to pay a fine not to exceed $500 for each day the violation continues past the date set for compliance. A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists. After one year from the filing of any such lien which remains unpaid, the enforcement board may authorize the city attorney to foreclose on the lien.

history. s.1,ch.80-300.

166.061 Appeals. — An aggrieved party may appeal a ruling or order of the enforcement board by certiorari in circuit court. An appeal shall be filed within 30 days of the execution of the order to be appealed.

History.-s. 1,ch.80-300.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY CIVIL ACTION

JOHN C. AMIS, JR., d.b.a. AMEY, INC. GULF MAPS and BONITA REALTY Petitioner, vs. CITY OF FORT MYERS and the CODE ENFORCEMENT BOARD of the City of Fort Myers and ELLIS SOLOMON, Mayor, Respondents.	CASE NO. 82-1123-CA-RTS

ORDER DISMISSING THIRD AMENDED PETITION FOR WRIT OF CERTIORARI WITH PREJUDICE

THIS MATTER, coming on before me once again upon the Motion to Dismiss the Third Amended Petition for Writ of Certiorari to the CITY OF FORT MYERS and the CODE ENFORCEMENT BOARD, and the Court having considered the pleadings and having heard the arguments of Counsel for Respondents and arguments and submissions of the Petitioner, finds for the Respondents and it is accordingly,

ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss the Third Amended Petition for Writ of Certiorari to the CITY OF FORT MYERS and the CODE ENFORCEMENT BOARD be and the same is hereby granted with prejudice.

DONE AND ORDERED in Chambers in Fort Myers, Lee County, Florida, this 12th day of May, 1983.

/s/ Robert T. Shafer, Jr.
ROBERT T. SHAFER, JR.
CIRCUIT JUDGE

CC: Frank B. Watson, Jr.
John C. Amis, Jr.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOHN C. AMIS, JR., D/B/A AMEY, INC., GULF MAPS and BONITA REALTY,	)	
Appellants,	)	
v.	)	Case No. 83-1242
CITY OF FORT MYERS and THE CODE ENFORCEMENT BOARD OF THE CITY OF FORT MYERS, and ELLIS SOLOMON, Mayor,	)	
Appellees.	)	

Opinion filed December 9, 1983.

Appeal from the Circuit Court for Lee County; Robert T. Shafer, Jr., Judge.

Appellant, pro se.

Norman A. Hartman, Jr., of Goetz & Hartman, Fort Myers, for Appellees.

PER CURIAM.

Affirmed.

OTT, C. J., and BOARDMAN and DANAHY, J. J., Concur.

FRANK B. WATSON, JR., Esquire
Post Office Drawer 2217
Fort Myers, Florida 33902

and

NORMAN A. HARTMAN, Esquire
Goetz and Hartman

IN THE DISTRICT COURT OF APPEALS OF THE STATE OF FLORIDA IN AND FOR THE SECOND DISTRICT

JOHN C. AMIS, JR. D.B.A. AMEY, INC. GULF MAPS & BONITA REALTY Petitioners, Appellants, vs. CITY OF FORT MYERS and THE CODE ENFORCEMENT BOARD of the CITY OF FORT MYERS Respondents, Appellees.,	)	Case No. 83-1242

MOTION FOR REHEARING OR FOR CLARIFICATION

COMES NOW, John C. Amis, Jr., d.b.a. AMEY, INC., GULF MAPS and BONITA REALTY and requests this court for a rehearing or for Clarification of the Order dated December 9, 1983 for the following reasons:

1. Appellants request a written opinion from the Court which is required for a discretionary review of the case under Rule 11.A 1 (a) of the I.O.P. of the State Supreme Court.

2. Appellants have been denied access to the courts in violation of Art. 1, Section 21 of the Constitution of the State of Florida.

3. Appellants request a written opinion from the court in order to determine why he was denied access to the Courts. "i.e."

(a). Was the petition not timely.

(b). Was Section 166.057 (4), stating "the record shall be presented to the court on appeal and shall be subject to review," repealed retroactively by Chapter 83-37 Section 6, Laws of Florida (1982).

(c). Did the Order issued by the Code Enforcement Board qualify as an order under Florida Statutes 166.053 (166.503 used by the City).

(d.) Were Appellants Due Process Rights denied him because he failed in a "form over substance matter" to adequately raise his constitutionally guaranteed rights as listed above.

WHEREFORE, Appellant requests this Honorable Court grant him a rehearing on the issues raised in the Appeal, or in the alternate issue a written opinion for Clarification of the Per Curiam Order, and, if it please the Court, grant oral argument on the due process issues raised in this case.

Respectfully Submitted,
/s/ J. C. Amis, Jr.
John C. Amis, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the foregoing has been furnished by U.S. Mail to Norman A. Hartman, Jr., P.O. Box 6844, Fort Myers, Florida 33911, this 21st day of **December**, 1983.

/s/ J. C. Amis, Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

JANUARY 11, 1984

JOHN C. AMIS JR., d/b/a AMEY, INC., GULF MAPS and BONITA REALTY,	]	
Appellants,	]	
v.	]	Case No. 83-1242
CITY OF FT. MYERS and THE CODE ENFORCEMENT BOARD OF THE CITY OF FORT MYERS, and ELLIS SOLOMON, Mayor	]	
Appellee.	]	

Appellant, John C. Amis, having filed a motion for rehearing or for clarification in the above-styled case, upon consideration, it is

ORDERED that said motion is hereby denied.

A TRUE COPY
TEST:
/S/ William A. Haddad by cs

CLERK DISTRICT COURT OF APPEAL
SECOND DISTRICT

cc: John C. Amis, Jr.
Norman A. Hartman, Jr.

IN THE SUPREME COURT OF FLORIDA

THURSDAY, FEBRUARY 16, 1984

JOHN C. AMIS, JR. d/b/a AMEY, INC., GULF MAPS and BONITA REALTY,	**	
Appellants,	**	
vs.	**	CASE No. 64,873
	**	District Court of Appeal,
CITY OF FORT MYERS and THE CODE ENFORCEMENT BOARD OF THE CITY OF FORT MYERS, and ELLIS SOLOMON, Mayor,	**	2nd District - No. 83-1242
Appellees.	**	

It appearing to the Court that the District Court of Appeal, Second District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3 (h) (I), Florida Constitution.

A True Copy

TEST

/s/ Sid J. White
Clerk Supreme Court

C

cc: Hon. William A. Haddad, Clerk
Hon. Sal Geraci, Clerk
Hon. Robert T. Shafer

Mr. John C. Amis, Jr.
Frank B. Watson, Jr., Esq.

IN THE SUPREME COURT OF FLORIDA

JOHN C. AMIS, JR., d/b/a AMEY, INC., GULF MAPS and BONITA REALTY	)	
Appellants,	)	
vs.	)	Case No. 64,873
	)	District Court of Appeal,
CITY OF FORT MYERS and THE CODE ENFORCEMENT BOARD OF THE CITY OF FORT MYERS, and ELLIS SOLOMON, Mayor,	)	2nd District - No. 83-1242
Appellees.	)	

MOTION FOR REINSTATEMENT

COMES NOW, Petitioner, John C. Amis, Jr. and states as follows:

1. Under Art. V Sec. 3 (b) (7) of the Florida Constitution, the Supreme Court may issue all writs necessary to the complete exercise of its jurisdiction.

2. Under Art. V Sec. 2 (a) of the Florida Constitution, the Supreme Court shall adopt a requirement that no cause shall be dismissed because an improper remedy has been sought.

3. On March 26, 1982, Petitioner filed a Petition for Writ of Certiorari in the Circuit Court to appeal the Order of the Code Enforcement Board, recorded March 5th, 1982, in O.R. Book 1587, page 88, as per Exhibit "A" attached hereto.

4. Florida Statutes 166.057 (4) (1981) which governs appeals to the Circuit Court from orders of a Code Enforcement Board, in this case states, "The record shall be presented to the court on appeal and shall be subject to review." As per Exhibit "B" attached hereto.

5. The Circuit Court dismissed Petitioner's Petition without issuing an opinion. As per Exhibit "C" attached hereto. This denied Petitioner his due process rights as guaranteed by the U.S. Constitution and the laws of Florida.

6. The Second District Court of Appeal affirmed, Per Curiam, the trial court decision; under the revised Florida Constitution, this limited Petitioner's right to appeal to the Supreme Court. As per Exhibits "d" and "E" attached hereto.

7. Petitioner would argue that the Trial Court, by refusing to hold a hearing on the merits of Petitioner's Petition for Writ of Certiorari, failed to comply with Florida Statutes 166.057, and, in effect, declared said statute invalid by refusing to act in compliance with said statute.

8. Petitioner would also argue that the Court of Appeal, by failing to correct the error of the Circuit Court, has eliminated Petitioner's right of due process and the right to petition the Government for a redress of grievances.

THEREFORE, for the above stated reasons, the Supreme Court has jurisdiction to hear this case and to issue all writs necessary to do justice in this cause.

Respectfully Submitted,
John C. Amis, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Reinstatement was sent by U.S. Mail to Norman A. Hartman, Jr., 2133 Winkler Avenue, Suite 300, Fort Myers, Florida 33911, this 28th day of February, 1984.

John C. Amis, Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

MARCH 9, 1984
IN THE SUPREME COURT OF
FLORIDA

WEDNESDAY, MARCH 7, 1984

JOHN C. AMIS, JR., d/b/a AMEY, INC., GULF MAPS and BONITA REALTY,	**	
Appellants,	**	
vs.	**	CASE No. 64,873
	**	District Court of Appeal
CITY OF FORT MYERS and THE CODE ENFORCEMENT BOARD OF THE CITY OF FORT MYERS, and ELLIS SOLOMON, Mayor,	**	2nd District - No. 83-1242
Appellees.	**	

On consideration of the motion for reinstatement filed by appellants,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

A True Copy

TEST

/s/ Sid J. White
Clerk Supreme Court

By: /s/ Debbie Causseaux
Deputy Clerk

C
cc: Hon. William A. Haddad, Clerk
Hon. Sal Geraci, Clerk
Hon. Robert T. Shafer
Mr. John C. Amis, Jr.
Frank B. Watson, Jr., Esq.
Norman A. Hartman, Jr., Esq.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

JOHN C. AMIS, JR., d/b/a AMEY, INC., GULF MAPS and BONITA REALTY,	)	
Appellants,	)	
vs.	)	Case No. 64,873
	)	District Court of Appeal
CITY OF FORT MYERS and THE CODE ENFORCEMENT BOARD OF THE CITY OF FORT MYERS, and ELLIS SOLOMON, MAYOR,	)	2nd District No. 83-1242
Appellees.	)	

NOTICE OF APPEAL TO UNITED STATES' SUPREME COURT

TO: (1) William A. Haddad, Clerk
Second District Court of Appeal
P.O. Box 327
Lakeland, Florida 33802

(2) Sid J. White, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32304

(3) Jim Smith, Attorney General
State of Florida
Department of Legal Affairs
Tallahassee, Florida 32304

(4) Norman A. Hartman, Jr.
P.O. Box 6844
Fort Myers, Florida 33911

Pursuant to United States' Supreme Court Rule 10, you and each of you are hereby notified that an appeal of this case and matter is being filed with the United States' Supreme Court on

or about June 5, 1984. You are further advised as follows:

1. Party taking appeal: John C. Amis, Jr., Petitioner before the trial court, Appellant before the Supreme Court of Florida and before the Court of Appeal of Florida Second District.

2. Judgment appealed from: John C. Amis, Jr. is appealing the orders of the Second District Court of Appeal order, upon which The Florida Supreme Court denied jurisdiction, on March 7, 1984.

3. Statute or statutes under which the appeal to the United States' Supreme Court is taken:

A. Fourteenth Amendment to the United States Constitution; taking of private property without due process.

Respectfully submitted,

John C. Amis, Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

JOHN C. AMIS, JR., d/b/a AMEY, INC., GULF MAPS and BONITA REALTY,	)	
Appellants,	)	
vs.	)	Case No. 83-1242
CITY OF FORT MYERS and THE CODE ENFORCEMENT BOARD OF THE CITY OF FORT MYERS and ELLIS SOLOMON, MAYOR,	)	
Appellees.	)	

VERIFIED CERTIFICATE AND PROOF OF SERVICE

THIS IS TO CERTIFY that on the 30th day of May, 1984, I forwarded the attached Notice of Appeal to the United States' Supreme Court to Sid J. White, Clerk, Supreme Court of Florida, Jim Smith, Attorney General, State of Florida and Norman A. Hartman, by certified United States Mail, return receipt requested.

John C. Amis, Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

STATE OF FLORIDA
COUNTY OF LEE

Subscribed and sworn to before me, Frances L. Yerdon, a Notary Public, State of Florida, this 30th day of May, 1984.

My Commission Expires:
April 6, 1988

Frances L. Yerdon
Notary Public

Office-Supreme Court, U.S.
FILED
JUL 6 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1997

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1983

JOHN C. AMIS, JR.
D/B/A AMEY, INC., GULF MAPS, BONITA REALTY
Appellants

v.

CITY OF FORT MYERS, FLORIDA
and the CODE ENFORCEMENT BOARD
of the City of Fort Myers
and ELLIS SOLOMON, Mayor,
Appellees

APPEAL FROM THE DISTRICT COURT OF FLORIDA
SECOND DISTRICT

MOTION TO DISMISS

JAMES L. GOETZ, ESQUIRE
GOETZ & HARTMAN
Attorneys for Appellees
Post Office Box 6844
Fort Myers, Florida 33911
(813) 936-2841

BEST AVAILABLE COPY

QUESTIONS PRESENTED UPON APPEAL

The question set forth in the jurisdictional statement of the Appellant is an inaccurate statement of the issue which the Appellant seeks to raise. The correct question is whether the failure of the State Courts of Florida to give written explanation for their decisions constitutes a denial of due process protected under the Fourteenth Amendment to the United States Constitution.

TABLE OF CONTENTS

	Page
Questions Presented Upon Appeal.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
Opinions Below.....	1
Jurisdiction.....	1
Constitutional and Statutory Provisions Involved.....	1
Statement of the Case.....	2
Motion to Dismiss	
1. The failure of state courts to render written opinions explaining their decisions does not constitute a denial of due process resulting in an unconstitutional taking of property.....	7
Conclusion.....	11
Certificate of Service.....	12
Appendix.....	A-1

TABLE OF AUTHORITIES

Cases:	Page
International Brotherhood, T. C. W. & H. v. Denver Milk Producers 334 U.S. 809 (1948)	9
Simmons v. West Haven Housing Authority 399 U.S. 510 (1970)	8
Constitutional and Statutory Authorities	
U.S. Const. amend. XIV	1
Fla. Const. Art. 1 Sec. 2	1,10
Fla. Const. Art. 1 Sec. 21	1,10
Fla. Statutes Ch 166	4
Fla. Statutes Ch 166.057	1,9
Fla. Statutes Ch 166.061	1,8

OPINIONS BELOW

The Appellees are in agreement with the representations set out by the Appellant.

JURISDICTION

The Appellees are in agreement with the Appellant's representations as to the various actions attributed to the State Courts of Florida, but denies that this Court's jurisdiction is invoked in this case pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Appellees are in agreement with the representations set out by the Appellant.

STATEMENT OF THE CASE

The Appellees offer the following as a more complete rendition of the facts in this case than presented by the Appellant.

In July, 1963 Amey, Inc., a Florida corporation, purchased a parcel of land within the City of Fort Myers and which was then zoned for business and began conducting business on the property as one or more corporations. In 1967, pursuant to then applicable Florida Statutes, the City of Fort Myers undertook a rezoning program for the whole city and after giving proper legal notice entered into and completed a rezoning program which in part resulted in the property of the Appellant being rezoned from business to residential. All legal notice requirements were met. Subsequent to the rezoning the Appellant failed to obtain city occupational licenses and improperly operated businesses in a residential zone. In February, 1979, Amey, Inc. deeded the parcel of land to the Appellant. At all times material hereto the Appellant was the sole or

controlling stockholder or principal in those organizations reflected in the style of the case.

After receiving due and proper notice, on January 21, 1982, the Appellant appeared before the Code Enforcement Board of the City of Fort Myers concerning the violations. It was explained to the Appellant that his failure to obtain appropriate occupational licenses subsequent to the rezoning resulted in his three businesses no longer being qualified under the "grandfather clause" at their present location as to businesses operating in a residential zone. Although the Code Enforcement Board was not able to rezone the Appellant's property, the Board at their meeting and within their power decided to allow the Appellant to operate his three business organizations at the subject location provided that the Appellant reimburse the City for the accrued fees and charges owing the City as the result of his failure to obtain the appropriate occupational licenses. It was further decided

that the Appellant be allowed one week to purchase all delinquent licenses and to pay all appropriate fines. The Appellant responded by attempting to pay his fines with "public office money certificates" (non-legal tender) dated January 29, 1982. The public office money certificates were not accepted by the City as they did not constitute legal tender. This matter, after due and proper notice to the Appellant, was heard again by the Code Enforcement Board on February 24, 1982 at which time the Board entered an Order fining the Appellant. The Appellant again refused to reimburse the City for the accrued fees and charges owing the City from the operation of his businesses and pursuant to Chapter 166, Florida Statutes, the City of Fort Myers on March 5, 1982 filed a lien against the property of the Appellant. Chapter 166, Florida Statutes, provided for the establishment of the Code Enforcement Board by the City of Fort Myers and also permitted the filing by the City of a lien

on the land where the violating business existed, regardless of the ownership of such land. On March 25, 1982 the Appellant filed a Writ of Certiorari in the Circuit Court in and for Lee County, Florida alleging that the filing of the lien by the City constituted a taking of property without due process of law. The Appellant's Petition for Writ of Certiorari in the Circuit Court was dismissed with prejudice after its third Amendment and such dismissal was without an opinion. The Circuit Court, in its wisdom, chose not to comment on the allegations set forth in the Third Amended Petition for Writ of Certiorari of the Appellant wherein, among other things, he stated that he was ready and willing to pay any and all city taxes which he might owe the City but was unable to do so since "no gold or silver coin or redeemable certificates circulate as money within the borders of the State of Florida, as such the Petitioner cannot lawfully discharge his liability for the tax debt.!" The Circuit Court's dismissal with prejudice was entered on

May 12, 1983.

Appellant's appeal was dismissed by the Second District Court of Appeal on December 9, 1983 PER CURIAM without an opinion.

Appellant's Motion for Rehearing or for Clarification was denied on January 11, 1984 without an opinion.

Appellant filed an appeal to the Florida Supreme Court on February 28, 1984 and which was dismissed subject to reinstatement if jurisdiction was established.

Appellant filed with the Florida Supreme Court a Motion for Reinstatement on February 28, 1984 and which was denied on March 7, 1984.

MOTION TO DISMISS

1. The failure of state courts to render written opinions explaining their decisions does not constitute a denial of due process resulting in an unconstitutional taking of property.

The Appellees move to dismiss the appeal from the District Court of Appeal of Florida, Second District. The gravamen of the Appellant's appeal is that the failure of the State Courts of Florida to render opinions to explain or support their decisions constitutes a denial of due process under the Fourteenth Amendment of the United States Constitution. It is interesting to note that the Appellant is not claiming that the decisions constitute a denial of due process, but only that the failure of the lower courts to render written opinions explaining their decisions constitutes the denial of due process claimed. It is the position of the Appellant

that the issuance of decisions by the lower courts without opinions denies the Appellant further judicial review in the State Courts of Florida and that such action constitutes a denial of due process and equal protection under the Fourteenth Amendment to the United States Constitution. The Appellees know of no constitutional obligation or statutory obligation of the State Courts of Florida to render written opinions explaining their decisions as to matters concerning actions taken by Code Enforcement Boards and cities under Section 166.061, Florida Statutes, now known as Section 162.11, Florida Statutes. It is well settled that the Supreme Court will generally not hear an appeal where the record does not clearly disclose the ground of the lower court's decision. Simmons v. West Haven Housing Authority, 399 U.S. 510 (1970). It has also been held that the Supreme Court will not hear an appeal where the record is unadequate for the purpose of deciding the constitutional

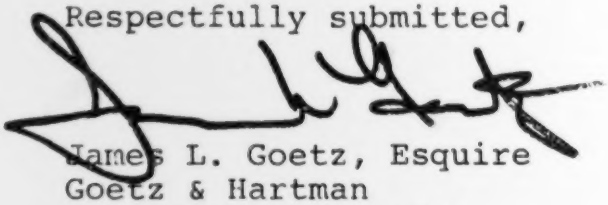
issues presented. International Brotherhood, T. C. W. & H. v. Denver Milk Producers, 334 U.S. 809 (1948). The Appellant does not have an inalienable right to a written opinion as to each lower court decision. To impose such an obligation on the State Courts would create an enormous administrative burden on the State Courts of Florida which would virtually paralyze the judicial process. While it is true that the law which permitted the creation of the Code Enforcement Board made a specific requirement that any Order of the Board may be appealed to the Circuit Court for review, the law does not contain any requirement that the Circuit Court render a written opinion as to any Order entered. Section 166.057, Florida Statutes. The Appellees see little merit in the argument of the Appellant that he has been denied due process when he was given the opportunity by the Circuit Court to file numerous amended Complaints prior to having

his Third Amended Complaint dismissed with prejudice after ample opportunity to perfect such Complaint. The Appellant, in his appeal to the Court of Appeal in Florida had the right and took the opportunity to file both his multi-page appeal and multi-page reply brief and has not had his access to the courts restricted in any manner whatsoever. Certainly, Sections 2 and 21, Article 1, Constitution of the State of Florida have not been violated by the actions of the lower courts and the Appellant to allege that he has been denied access to the courts because he has not received a written opinion as to the decisions rendered by the courts is without merit or precedent. The Appellant was entitled to his day in Court and had his day and should not be entitled to another day in Court just because he is dissatisfied with the decision.

CONCLUSION

The failure of the District Court of Appeal of Florida, Second District, to give a written explanation for its decision denying the appeal of the Appellant did not constitute a denial of due process protected under the Fourteenth Amendment to the United States Constitution. Accordingly, the Appellees pray that this Court dismiss the appeal for a plenary review of the decision of the District Court of Appeal of Florida, Second District.

Respectfully submitted,



James L. Goetz, Esquire
Goetz & Hartman
Post Office Box 6844
Fort Myers, Florida 33911
(813) 936-2841

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 5th day of July, 1984, mailed three copies of the Motion to Dismiss, postage prepaid to:

Jim Smith
Attorney General, State of Florida
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32304

John C. Amis, Jr.
2670 Maple Avenue
Fort Myers, Florida 33901

James L. Goetz, Esquire
Goetz & Hartman
Post Office Box 6844
Fort Myers, Florida 33911
(813) 936-2841

A-1

No. 83-1997

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

JOHN C. AMIS, JR.
D/B/A AMEY, INC., GULF MAPS, BONITA REALTY
Appellants,

v.

CITY OF FORT MYERS, FLORIDA
and the CODE ENFORCEMENT BOARD
of the City of Fort Myers
and ELLIS SOLOMON, Mayor,
Appellees

APPEAL FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT

APPENDIX

JAMES L. GOETZ, ESQUIRE
GOETZ & HARTMAN
Post Office Box 6844
Fort Myers, Florida 33911
(831) 936-2841

The Appellees accept, adopt and incorporate by reference the Appendix of the Appellant.

Office-Supreme Court, U.S.
FILED
JUL 20 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1997

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

JOHN C. AMIS, JR.
D/B/A AMEY, INC., GULF MAPS, BONITA REALTY
Appellants

v.

CITY OF FORT MYERS, FLORIDA
and the CODE ENFORCEMENT BOARD
of the City of Fort Myers
and ELLIS SOLOMON, Mayor,
Appellees

APPEAL FROM THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RESPONSE TO MOTION TO DISMISS

JOHN C. AMIS, JR.
In Propria Persona
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

QUESTIONS PRESENTED UPON APPEAL

1. Does the due process clause of the fourteenth amendment prohibit the States from denying a citizen Procedural Due Process?

TABLE OF CONTENTS

	Page
Questions Presented Upon Appeal	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Plenary Consideration	
1. THE DUE PROCESS CLAUSE PROHIBITS THE STATE FROM DENYING MEANINGFUL APPELLATE REVIEW GUARANTEED BY STATUTE	4
Conclusion	5
Certificate of Service	6

TABLE OF AUTHORITIES

Cases	Page
Fuentes v. Shevin, 407 U.S.67,80 32 L Ed2d 556,569 (1972)----------	2
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Unions, et al.,334 U.S 809 (1948), Appeal from the Supreme Court of Colorado.----------	3
Simon v. West Haven Housing Authority 399 U.S. 510 (1970) ----------	2

OPINIONS BELOW

There are no opinions from the State Courts.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Appellant incorporates by reference the statement of the case set out in the original brief.

RESPONSE TO MOTION TO DISMISS

1. The impropriety of Motion to Dismiss

It is the position of the Appellant that the lower courts dismissed the petition without giving Appellant an opportunity to be heard.

> The central meaning of procedural due process is that the party whose rights are to be affected are entitled to be heard. Fuentes v. Shevin, 407 U.S. 67,80. 32 L Ed2d 556,569 (1972)

The City of Fort Myers did not notify Appellant of the zoning change and the lower courts refused to review the record.

> The fourteenth Amendment draws no bright lines around three-day, 10-day, or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind. Fuentes, Supra 573

In Simon V. West, Haven Housing Authority, 399 U.S. 510 (1970), the reason stated in the headnote is,

> "In an action by landlords for summary eviction in which their tenants

> challenged the constitutionality of state statute requiring an appeal bond, the United States Supreme Court will dismiss the appeal where the opinion of the state appellate court below is ambiguous as to whether that court refused to hear the tenants' appeal because it thought the bond requirement left no room for a waiver or because the appeal had been taken for purposes of delay."

In the case at bar there is absolutely nothing ambiguous in the fact that the lower court dismissed the petition without giving petitioner the right to be heard (Appendix A-5).

> In INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNIONS, et al., Appellants v. Denver Milk Producers, Inc., et al., 334 U.S. 809 (1948), Appeal from the Supreme Court of Colorado.

See same case below, 116 Colo 389, 183 P2d 529.

The Court ruled,

> "Because of the inadequacy of the record, we decline to decide the constitutional issues involved. The appeal is dismissed without prejudice to the determination in further proceedings of questions arising under the Federal Constitution. 304 U.S. 809

In this case the record in regard to due process is complete and fully stated in the Appendix pp A-9, A-10, A-11, & A-13.

Appellant has been denied due process on three (3) specific issues.

1. The lower court's refusal to hear the issues and give appellant an opportunity to offer proof.

2. The taking of property by zoning Appellant's property from business to residential without notice.

3. The filing of a lien against the real property of John C. Amis, Jr. to satisfy the alleged liability of Amey, Inc., a Florida Corporation.

It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner.

The law many not contain any requirement for a written opinion, but the law does require that the record shall be presented to the court on appeal and shall be subject to review. The lower courts have failed or refused to review the record, which is a denial of due process.

The brief of the appellees is unresponsive to the appellant's opening brief, primarily because the defendants never were required in the lower courts to focus on the issues raised, and so this case has never actually been litigated in any meaningful sense.

Petitioner was simply thrown out of Court.

While the petitioner ultimately bears the burden of proof and of going forward in a civil action, that burden normally is to be met at trial pursuant to the Seventh Amendment. When a defendant submits a pre-trial motion to dismiss, as in this case, the defendant as movant has the burden of proving the absence of any material fact in controversy, Rule 1.420(b) Florida Rules of Civil Proceedure.

Unless the movant has met his burden, which requires him first to identify the relevant questions of law arising from the petition, the petitioner - respondent should be permitted to have his complaint reviewed by the Court after an answer by the Appellees has been submitted to the Court.

Neither the Circuit Court nor the respondents address the constitutional issues raised by the petition in this case, as identified in appellant's opening brief. The respondents successfully deflected the Court's attention to matters not relevant to the petition.

To repeat the assertion in appellant's opening brief, the due process clause prohibits the state from taking property without due process of law.

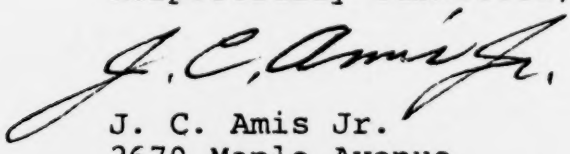
There exist at least two material issues of fact in dispute: Defendant's rezoned petitioner's property without notification and filed a lien against Amis for the alleged liability of Amey, Inc.

The Circuit Court did not address the first question at all and, perhaps, implicitly resolved the second in favor of defendants without an evidentiary hearing and <u>without reading the record</u>.

CONCLUSION

The point is that no court anywhere has reviewed Appellant's case at all. Appellant's initial petition in the Circuit Court was dismissed after a motion hearing and petitioner's claim has never been reviewed under any type of evidentiary hearing.

Respectfully submitted,



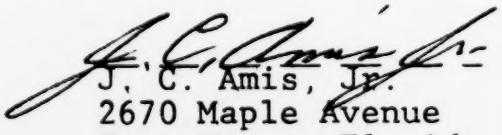
J. C. Amis Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 17 day of July, 1984, mailed three copies of the Response to the Motion to Dismiss, postage prepaid to:

Jim Smith
Attorney General, State of Florida
Department of Legal Affairs
The Capitol
Tallahassee, Florida 33901

James L. Goetz
Post Office Box 6844
Fort Myers, Florida 33911



J. C. Amis, Jr.
2670 Maple Avenue
Fort Myers, Florida 33901
(813) 334-8266